IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 7585 of 2007(C)

OS.460/2004 of MUNSIFF COURT, VAIKOM
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PETITIONER:

VIJAYAN, S/O.KUTTAN, KALAPPURACKAL HOUSE VAIKAPRAYAR KARA, VADAKKEMURI VILLAGE, VAIKOM TALUK.

BY ADV. SRI.V.M.SYAM KUMAR

RESPONDENTS:

VENU, S/O.KUTTAN, KALAPPURACKAL HOUSE, PADINJAREKKARA P.O., PADINJAREKKARA MURI, NADUVILE VILLAGE, VAIKOM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF I.A.1273(a)/04 IN O.S. 460/04 OF MUNSiff'S Court, VAIKOM.

EXT.P2 TRUE COPY OF I.A.793/04 IN O.S. 64/04 OF MUNSiff'S Court,VAIKOM.

EXT.P3 TRUE COPY OF COMMON ORDER DATED 19.10.06 IN IA 1273(A)/04 IN O.S. 460/04 AND IA 793/04 IN O.S. 64/04 OF MUNSIFF'S COURT,VAIKOM.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 7585 OF 2007

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Dated this the 29th day of May, 2007.

J U D G M E N T

This writ petition is preferred against the finding rendered by the learned Munsiff in interim applications in O.S.460/04 and 64/04. A perusal of the order would reveal that one Venu filed a suit against his father Kuttan for a declaration that the gift deed executed by him is valid and the cancellation subsequently executed by him is null and void. Subsequently, the said Kuttan instituted a suit through his elder son Vijayan for a declaration and eviction of the younger son from the property. Along with the suit an application was filed to appoint the elder son as the guardian of the property. He had also produced a medical certificate along with the petition wherein it is recorded that Sri. Kuttan is a very old person suffering from dementia, hyper tension, heart decease, diabetics etc. An enquiry is to be conducted as contemplated under Order 32 Rule 15 with regard to minor persons and unsound persons, as such persons may require the help of others. In order to satisfy the conscience, the Court summoned Sri. Kuttan and the learned Munsiff put several

questions to him. The statement given by the said Kuttan are extracted in the order. He is able to say his name, his children's name, his house name and where he is residing and along with whom he resides. He has also a clear precise memory about his correct age and that he is residing with his younger son Venu and his family and that he has come to the Court from the said residence. He had also stated that he has received summons from the Court. So, on an analysis of those materials the Court found that except for the other ailments of old age, the said Kuttan has got mental capacity to look after his affairs and so guardian is not to be appointed as contemplated by the C.P.C. From the nature of enquiry conducted and the answers given, I am also convinced that the alleged guardian has not satisfied the requisites contemplated under the law, especially under Order 32. Therefore, I do not find any legal infirmity in the order passed by the learned Munsiff. Therefore, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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